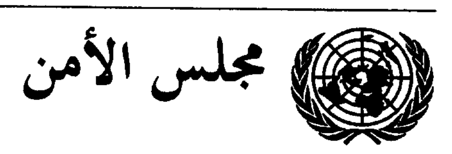


Distr.: General
23 October 2001
Arabic
Original: English

رسـالة مؤرخـة ٢٢ تشـرين الأول/أكتوبـر ٢٠٠١ موجهـة مـن الأمين العام إلى رئيس مجلس الأمن

بناء على طلب الممثل الدائم لبابوا غينيا الجديدة المقدم إلى الأمم المتحـدة، أحيـل لعناية مجلس الأمن رسالته الموجهة إليّ والمؤرخة ١٤ أيلول/سبتمبر ٢٠٠١، والتي يطلب فيها مساعدة الأمم المتحدة في تنفيذ اتفاقية بوجانفيل للسلام، وخاصة في مجال جمع الأسلحة والتخلص منها.

ويدرك أعضاء مجلس الأمن الدور الذي قام به مكتب الأمم المتحدة السياسي في بوجانفيل بالاشتراك مع فريق مراقبة السلام لدعم العملية التي أدت إلى التوصل إلى اتفاقية بوجانفيل للسلام، المرفقة نسخة منها برسالة السفير دونيجي (انظر الضميمة ٢).

وأعتزم بعد الحصول على موافقة المجلس، الرد بالإيجاب على طلب حكومة بابوا غينيا الجديدة والذي تؤيده الأطراف الموقعة على اتفاقية بوجانفيل. وعلاوة على الولاية الحالية لمكتب الأمم المتحدة السياسي في بوجانفيل، والمنصوص عليها في رسالتي المؤرخة ٢ حزيران/يونيه ١٩٩٨ الموجهة إلى رئيس مجلس الأمن (S/1998/506) سيضطلع المكتب أيضا بالمهام التالية الواردة في الجزء هاء من اتفاقية بوجانفيل للسلام:

(أ) مواصلة عمله بالاشتراك مع مجموعة مراقبة السلام؛

(ب) تولي رئاسة اللجنة الاستشارية لعملية السلام واللجنة الفرعية المعنية بالتخلص من الأسلحة والمؤلفة من ممثلين عن الأطراف المختلفة ومجموعة مراقبة السلام. وتشمل مهام اللجنة الفرعية تعزيز التوعية العامة وتطوير عملية التخلص من الأسلحة وإدارتها وتنفيذها؛

(ج) تقديم تقارير إلى اللجنة الفرعية للجنة الاستشارية لعملية السلام حينما وكلما تبلغ مجالس زعماء/الحكماء مكتب الأمم المتحدة السياسي في بوجانفيل بأن المقاتلين

السابقين الموجودين في مجتمعاتهم المحلية أصبحوا مستعدين لنزع أسلحتهم، وأن الوحدات المتبقية من قوة الدفاع عن بابوا غينيا الجديدة والشرطة المتنقلة مستعدة للانسحاب ووضع الأسلحة في حاويات؛

(د) القيام بعمليات التفتيش والتحقيق كلما رأت ذلك ضروريا، في كل مرحلة من مراحل عملية التخلص من الأسلحة، والتحقق من جمع الأسلحة وتخزينها، ورفع تقارير عما تتوصل إليه من نتائج إلى اللجنة الاستشارية لعمليات السلام؛

(هـ) الاحتفاظ بأحد المفتاحين اللازمين لفتح الحاويات ذات نظام الإغلاق المزدوج والتي يتم تخزين الأسلحة فيها؛

(و) أن يتحقق المكتب، بمساعدة مجموعة مراقبة السلام، وبناء على طلب أحد الأطراف من التزام جميع الأطراف بتسليم أسلحتهم وما إذا كانت هذه الأسلحة تم تخزينها في أماكن آمنة وأن يصدق على ذلك الأمر الذي يمكن أن يمهد الطريق أمام إجراء أول انتخابات لحكومة مستقلة في بوجانفيل أو يرى ضرورة إرجاء هذه الانتخابات وإلى متى.

وآمل أن يؤدي تنفيذ الاتفاقية، لا سيما تسليم أسلحة المقاتلين السابقين، إلى تمهيد الطريق أمام أنشطة بناء السلام، بعد انتهاء الصراع وكفالة أن يحقق شعب بوجانفيل فوائد ملموسة من وراء عودة السلام الدائم إلى الجزيرة.

وسيقوم مكتب الأمم المتحدة السياسي في بوجانفيل بهذه الأنشطة بالتشاور المستمر مع إدارة شؤون نزع السلاح وبرنامج الأمم المتحدة الإنمائي. وسيتطلب توسيع ولاية مكتب الأمم المتحدة السياسي في بوجانفيل إنشاء مكتب فرعي في بوكا، كما سيحتاج إلى موارد إضافية. وقد قدرت الأعباء المالية الإجمالية للمكتب بحوالي ٢,٣ مليون دولار للفترة من كانون الثاني/يناير إلى كانون الأول/ديسمبر ٢٠٠٢، وستغطى من الموارد المخصصة للبعثات الخاصة لفترة السنتين ٢٠٠٢-٢٠٠٣. وكما حدث من قبل، سأطلع المجلس أولا بأول على تطورات عمل المكتب.

وسأكون ممتنا لو تفضلتم بإطلاع أعضاء مجلس الأمن على هذه الرسالة ومرفقها.

(توقيع)
كوفي عنان

مرفق

رسالة مؤرخة ١٤ أيلول/سبتمبر ٢٠٠١ موجهة إلى الأمين العام من الممثل الدائم لبابوا غينيا الجديدة لدى الأمم المتحدة

هذا الأسبوع ليس مناسبا بالتأكيد لأي احتفال بسبب الكارثة التي حلت بهذه المدينة التي تهمنا جميعا. وأنا واثق أن كل شخص في الأمم المتحدة وفي البعثات المعتمدة لديها تأثر بها بشكل أو بآخر. كما فقدت بعض البلدان عددا من مواطنيها، وبرغم أن بابوا غينيا الجديدة لم تتأثر في هذا الشأن، فقد بدأ الكثيرون يستشعرون فظاعة النوايا الدموية التي نفذ بها مرتكبو العملية مخططاتهم. ونحن نأسف لأولئك الذين فقدوا حياتهم ونصلي من أجل المصابين وأسر المفقودين، والشجعان الذين يعملون بلا كلل في عمليات الإنقاذ.

ووسط هذه المأساة وهذه المناسبة الحزينة والمؤسفة نقدم لكم بتواضع شديد نسخة موقعة من اتفاقية بوغانفيل للسلام (انظر الضميمة ٢)*.

ومرفق أيضا مذكرة (انظر الضميمة ١)* تضم نبذة مختصرة عما تطلبه حكومة بابوا غينيا الجديدة من مجلس الأمن. ونود توجيه اهتمامكم إلى الفقرات ٥ و ٦ و ٧ من المذكرة، على وجه الخصوص.

واتساقا مع بيان رئيس مجلس الأمن المؤرخ ١٤ آب/أغسطس ٢٠٠١، نطلب إلى المجلس الموافقة على طلب حكومة بابوا غينيا الجديدة الوارد في الفقرة ٧ (٢) من المذكرة.

وسأكون ممتنا لو تفضلتم بإحالة الطلب الوارد في هذه الرسالة، بالنيابة عن حكومة بابوا غينيا الجديدة، إلى رئيس مجلس الأمن وأعضائه، وكذلك اتفاقية بوغانفيل للسلام، والمذكرة.

(توقيع) بيتر دونيجي
السفير والممثل الدائم

* تستنسخ الضمائم باللغة التي قدمت بها فقط.

Enclosure I

AIDE MEMOIRE

Presentation of the *Bougainville Peace Agreement*, and Formal Request for Assistance in Implementation by the United Nations Political Office / Observer Mission in Bougainville, Papua New Guinea (UNPOB / UNOMB)

1. Papua New Guinea is pleased to present the United Nations Security Council with a copy of the *Bougainville Peace Agreement*, which was signed in Arawa on 30 August 2001.

2. This Agreement is the culmination of more than two years of discussion between the Government of Papua New Government and the other parties involved in the peace process in Bougainville, Papua New Guinea.

3. The Agreement is in three main parts:

   (1) Autonomy;

   (2) Referendum; and

   (3) Weapons Disposal Plan.

   The signatures made on behalf of the parties appear at the end of the Agreement.

4. An outline of the Agreement, jointly prepared as an agreed summary by all of the parties, is appended for information.

5. The Agreement itself contains a number of commitments made by the Government of the Independent State of Papua New Guinea in respect of the United Nations Security Council:

   (1) to table the *Bougainville Peace Agreement* in the United Nations Security Council (Paragraph 334);

(2) to request the United Nations Security Council to agree that UNPOB / UNOMB –

i. continue monitoring and reporting on implementation of agreed arrangements as provided in the *Ceasefire Agreement*; (Paragraph 334); and

ii. assist in implementing the Resolution on Weapons Disposal adopted by the Peace Process Consultative Committee (PPCC) on 9 May and included in Part E of the *Bougainville Peace Agreement* (Paragraph 330 (a)).

- In relation to (2).i, the Agreement envisages that UNPOB / UNOMB will continue to chair the PPCC (Paragraph 335), as provided in the *Ceasefire Agreement* (which was signed on 30 April 1998).

- In relation to (2).ii , the Agreement notes that the decision on the final fate of the weapons at Stage 3 of the agreed weapons disposal plan means that there may be a requirement for 'a continuing presence' by UNPOB / UNOMB 'for a short period to conclude their assignment ... during implementation', and that the likely exit-date is 'around the middle and not later than the end of 2002' (Paragraph 330 (b) and (c)).

6. The details of the role that the Agreement foresees for UNPOB / UNOMB in relation to implementation of the agreed weapons disposal is for UNPOB / UNOMB to -

(1) chair the sub-committee to be established to develop, manage and implement weapons disposal on behalf of the Peace Process Consultative Committee (PPCC); and

(2) participate in implementation as follows:

Stage 1 - receive and transmit information when particular areas are ready for ex-combatants to disarm and re-integrate into the community …. and verify the safe storage of weapons after they have been handed in and placed in sealed containers by unit commanders;

Stage 2 - supervise storage, and hold one of the two keys necessary to open the containers which will be provided at a small number of central locations; the Constitutional amendments required to implement the Agreement will take legal effect on verification by UNPOB / UNOMB that 'the weapons are in secure, double-locked containers under its supervision' – pending a final decision on the fate of the weapons, which should be made within the following 4 ½ months; and

Stage 3 – when the decision on the final fate of the weapons is made, be available to verify and certify, with the assistance of the neutral, regional Peace Monitoring Group, whether there has been substantial compliance in the handing in of weapons and whether the level of security makes it conducive to hold the first elections for the autonomous Bougainville Government, and to report to the PPCC on whether the elections should be deferred, and the length of any deferral.

- In order to be effective in the role envisaged in the Agreement, UNOMB 'will carry out such inspections and enquiries as its representative considers necessary at each stage, verify the collection and storage of weapons, and report its findings regularly, frequently and fully to the PPCC, with respect for such confidentiality as may be required.'

- The agreed weapons disposal plan contains an assurance that the parties will co-operate with UNOMB, and ensure it can carry out its responsibilities efficiently and effectively.

7. Papua New Guinea, therefore –

   (1) presents the *Bougainville Peace Agreement*; and

   (2) respectfully requests that UNPOB / UNOMB:

      i. continue monitoring and reporting on implementation of agreed arrangements as provided in the *Ceasefire Agreement*; and

      ii. assist in implementing the Resolution on Weapons Disposal adopted by the Peace Process Consultative Committee (PPCC) on 9 May and included in Part E of the *Bougainville Peace Agreement* (Paragraph 329).

8. The request is made with sincere appreciation for the Statement to the Press of 14 August 2001, in which the President of the United Nations Security Council –

   noted that the United Nations Political Office in Bougainville has consistently played an important "good offices" role. UNPOB should continue this role, including with regard to weapons collection and disposal.

14 SEPTEMBER 2001
PERMANENT MISSION OF PAPUA NEW GUINEA TO THE UNITED NATIONS

INTRODUCTION AND OUTLINE

This agreement is a joint creation by the Government of the Independent State of Papua New Guinea and Leaders representing the people of Bougainville ("the Parties") to resolve the Bougainville conflict and to secure a lasting peace by peaceful means.

It is intended to further the objectives of *The Burnham Truce, the Lincoln and Ceasefire Agreements* and other agreements and understandings between the parties.

This Agreement will be implemented through consultation and co-operation, and will form the basis for drafting constitutional amendments and other laws in order to give legal effect to this Agreement.

The Bougainville Parties will work through the autonomous Bougainville Government when it is formed.

The Agreement has three pillars. They are as follows.

1. **Autonomy**

   The Agreement provides for arrangements for an autonomous Bougainville Government operating under a home-grown Bougainville Constitution with a right to assume increasing control over a wide range of powers, functions, personnel and resources on the basis of guarantees contained in the National *Constitution*.

2. **Referendum**

   The agreement provides for the right, guaranteed in the National *Constitution,* for a referendum among Bougainvilleans' on Bougainville's future political status.

   The choices available in the referendum will include a separate independence for Bougainville.

   The referendum will be held no sooner than ten years, and in any case no later than fifteen years, after the election of the autonomous Bougainville Government.

   The actual date of the referendum will be set taking account of standards of good governance and the implementation of the weapons disposal plan.

   The outcome of the referendum will be subject to ratification (final decision making authority) of the National Parliament.

3. **Weapons Disposal Plan**

   The agreed weapons disposal plan will proceed in stages, area by area around Bougainville, beginning as soon as is practicable.

Enclosure II

BOUGAINVILLE PEACE AGREEMENT

Signed at Arawa **30 August 2001**

INTRODUCTION AND OUTLINE

This agreement is a joint creation by the Government of the Independent State of Papua New Guinea and Leaders representing the people of Bougainville ("the Parties") to resolve the Bougainville conflict and to secure a lasting peace by peaceful means.

It is intended to further the objectives of *The Burnham Truce, the Lincoln and Ceasefire Agreements* and other agreements and understandings between the parties.

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   The agreement provides for the right, guaranteed in the National *Constitution,* for a referendum among Bougainvilleans' on Bougainville's future political status.

   The choices available in the referendum will include a separate independence for Bougainville.

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   The actual date of the referendum will be set taking account of standards of good governance and the implementation of the weapons disposal plan.

   The outcome of the referendum will be subject to ratification (final decision making authority) of the National Parliament.

3. **Weapons Disposal Plan**

   The agreed weapons disposal plan will proceed in stages, area by area around Bougainville, beginning as soon as is practicable.

After the constitutional amendments implementing this Agreement have been passed by the National Parliament and by the time they take legal effect, remaining Defence Force and Police Mobile Unit personnel will have been withdrawn from Bougainville and weapons will be held in secure containers.

The containers will have two separate locks with the key to one held by the United Nations Observer Mission on Bougainville (UNOMB) and the other by the relevant ex-combatant Commander.

The UNOMB will verify that all parties are acting in accordance with the agreed weapons disposal plan.

A decision on the final fate of the weapons should be taken within four and a half months of the constitutional amendments coming into effect.

CONTENTS

THE PARTIES AGREE AS FOLLOWS:

A. ROLE AND STATUS OF THIS AGREEMENT

1. This Agreement is the basis for drafting the constitutional amendments and other laws, which the National Government will move to provide for implementation.

2. The implementing Constitutional and other laws will state that they are intended to give legal effect to this Agreement.

3. This Agreement:

   (a) will be used as a guide for implementation and to assist the Courts in interpreting the Constitutional and other laws, which give legal effect to this agreement;

   (b) is intended to be interpreted liberally, by reference to its intentions, and without undue reference to technical rules of construction.

B. AUTONOMY

1. OBJECTIVES OF AUTONOMY

4. On the basis of shared acceptance of the sovereignty of Papua New Guinea, the agreed autonomy arrangements are intended to:

   (a) facilitate the expression and development of Bougainville identity and the relationship between Bougainville and the rest of Papua New Guinea;

   (b) empower Bougainvilleans to solve their own problems, manage their own affairs and work to realize their aspirations within the framework of the *Papua New Guinea Constitution*;

   (c) promote the unity of Papua New Guinea;

   (d) provide for a democratic and accountable system of government for Bougainville that meets internationally accepted standards of good governance, including protection of human rights;

   (e) ensure respect for the international obligations of Papua New Guinea, as well as the interests of Bougainville when Papua New Guinea enters into new international obligations;

   (f) enable the National Government and the autonomous Bougainville Government to exercise their constitutional roles effectively and co-operatively;

   (g) provide sufficient personnel and financial resources for the autonomous Bougainville Government to exercise its powers and functions effectively;

   (h) maintain a mutually acceptable balance of interests between the interests of Bougainville and Papua New Guinea as a whole, including equity between different parts of the country.

2. BOUNDARIES

5. Bougainville's jurisdiction will extend to sea-areas where the National Government has power.

6. The Constitutional Laws implementing the agreed autonomy arrangements will define Bougainville territory as extending to three nautical miles out to sea from the coasts of islands within the boundaries specified in the *Organic Law on Provincial Boundaries*.

7. The National Government and the autonomous Bougainville Government will develop agreed arrangements for co-operation in the exercise of their respective powers and functions at sea.

8. The National Government and the autonomous Bougainville Government will agree to equitable arrangements (additional to those agreed for fishing) for sharing revenues from activities in areas of sea and seabed beyond the guaranteed three-mile limit and within the Exclusive Economic Zone and the continental shelf associated with Bougainville territory.

9. The question of whether Bougainville's maritime boundaries should be extended beyond those agreed above will be determined through consultation between the National Government and the autonomous Bougainville Government, bearing in mind:

   (a) the mutual benefits that Bougainville and Papua New Guinea as a whole gain from Papua New Guinea's archipelagic status; and

   (b) the agreed autonomy arrangements.

3. BOUGAINVILLE CONSTITUTION

Bougainville Constitution

10. There will be a constitution for Bougainville ('the Bougainville Constitution').

11. The Bougainville Constitution will provide for the organisation and structures of the government for Bougainville under the autonomy arrangements ('the autonomous Bougainville Government') in a manner consistent with this Agreement.

12. Relations between the National Government and the autonomous Bougainville Government will be regulated in accordance with the National *Constitution* and will not be the subject of provision in the Bougainville Constitution except as specifically provided elsewhere in this Agreement.

13. The Bougainville Constitution will provide for the names of Bougainville and the autonomous Bougainville Government.

Developing the Bougainville Constitution

14. The Bougainville Interim Provincial Government in consultation with the Bougainville People's Congress will establish a Constitutional Commission and a Constituent Assembly to make the Bougainville Constitution.

15. (a) The National Government will be kept informed and allowed adequate opportunity to make its views known as proposals for the Bougainville Constitution are developed.

    (b) Before the Bougainville Constitution is adopted by the Constituent Assembly, there will be consultation with the National Government about the contents of the draft Constitution.

Constitutional Commission to Develop Proposals

16. A Constitutional Commission broadly representative of the people of Bougainville will make proposals for a Bougainville Constitution.

17. The Constitutional Commission will consult widely with the people of Bougainville to understand their views on a Constitution for Bougainville, and will prepare a draft Bougainville Constitution for consideration by the Constituent Assembly.

Constituent Assembly to Debate and Adopt Bougainville Constitution

18. The people of Bougainville, through a representative Constituent Assembly, will consider the draft Bougainville Constitution.

19. The Constituent Assembly will debate and may amend the draft Bougainville Constitution, and will adopt the Constitution in the manner set out in this clause.

Establishing the Constituent Assembly

20. The parties will co-operate in facilitating the establishment of the Constituent Assembly.

Principles and Standards for Development and Contents of Constitution

21. Subject to other provisions of this Agreement, the arrangements used to establish the Bougainville Constitution and the structures and procedures for the autonomous Bougainville Government established under it will meet internationally accepted standards of good governance.

Endorsement of Bougainville Constitution

22 (a) Following adoption of the Bougainville Constitution, the Constituent Assembly shall transmit a copy of that Constitution to the National Executive Council.

(b) Upon being satisfied that the requirements of the National *Constitution* for the Bougainville Constitution have been met, the National Executive Council shall advise the head of State to endorse that Constitution.

23. The National Government will gazette the Bougainville Constitution upon its endorsement by the Governor-General.

24. The constitutional amendments will include an agreed procedure to ensure that the Bougainville Constitution can be brought into effect without delay.

Coming into Effect of Bougainville Constitution

25. The Bougainville Constitution will come into effect on a date after its endorsement by the Head of State, and in the manner provided for in that Constitution.

Legal Status of Bougainville Constitution

26. The Bougainville Constitution will be supreme law as regards matters that fall within Bougainville's jurisdiction, and Bougainville laws and institutions will be

required to be consistent with the Bougainville Constitution. The Bougainville Constitution will be enforceable:

(a) in the Supreme Court; and

(b) the Bougainville courts, to the extent provided for in the Bougainville Constitution.

Amendment of Bougainville Constitution

27. The Bougainville Constitution may be amended only by the Bougainville legislature following a procedure and requirements (inclusive of voting majority) as may be prescribed by the Bougainville Constitution.

4. STRUCTURES OF THE AUTONOMOUS BOUGAINVILLE GOVERNMENT

Legislature

28. The Bougainville Constitution will provide that the institutions of the autonomous Bougainville Government will include a legislature which shall be a mainly elected body, but may also include members appointed or elected to represent special interests, such as women, youth, churches.

Executive

29. The Bougainville Constitution will provide for the autonomous Bougainville Government to include an accountable executive body.

30. There will be a head of the executive whose title, method of appointment, and powers and functions will be specified in the Bougainville Constitution.

Judiciary

31. The Bougainville Constitution may provide for an impartial judiciary for Bougainville, or may provide for Bougainville to operate either in full or in part under courts established under the national Constitution.

Powers and Functions of Legislature, etc.

32. The powers, functions and procedures of the legislature, executive and judiciary will be as specified by or under the arrangements in this Agreement and the Bougainville Constitution.

Other Government Institutions

33. The Bougainville Constitution may establish other institutions that may be required for the autonomous Bougainville Government to carry out its powers and functions effectively, including institutions responsible for public administration provided for elsewhere in this Agreement (such as bodies to administer separate public service, police, teaching service and correctional institutional services bodies) and local government bodies.

Considerations Concerning Decisions on Bougainville Institutions

34. Decisions made by both the Constituent Assembly and the legislature of the autonomous Bougainville Government about establishing institutions proposed to be part of the autonomous Bougainville Government shall be made only after considering the costs likely to be involved in such decisions and the

administrative capacity necessary to implement them. Such decisions include those about:

(a) the number of seats in the Bougainville legislature from time to time;

(b) the courts within the Bougainville judiciary;

(c) provision in the Bougainville Constitution for institutions other than the legislature, the executive and the judiciary.

Accountability of Government Institutions

35. The Bougainville Constitution will make provision for the accountability of all institutions created under it.

36. Provision in relation to accountability will include arrangements concerning a public accounts committee of the legislature, audit of provincial accounts and management of the revenue funds and accounts of the autonomous Bougainville Government.

Interim and Transitional Arrangements

37. Until the autonomous Bougainville Government is established through elections, the Bougainville Interim Provincial Government will continue to operate in accordance with the *Organic Law on Provincial Governments and Local-level Governments* and also in accordance with arrangements already agreed between the Bougainville parties.

38. When the *Organic Law on Provincial Governments and Local-level Governments* ceases to apply in Bougainville and the autonomous Bougainville Government is established, the Bougainville Interim Provincial Government and the Bougainville People's Congress will cease to exist.

Constitutional Office-holders

39. Bougainville will have the power to create independent Constitutional Office-holders to carry out powers and functions within Bougainville's constitutional responsibilities.

40. National Constitutional Office-holders will continue to carry out their responsibilities in areas of national jurisdiction in Bougainville.

41. National Government and Bougainville Constitutional Office-holders may enter into cooperative or agency arrangements to avoid gaps and duplication and to encourage common standards.

42. The autonomous Bougainville Government will bear the cost of creating and maintaining Constitutional Office-holders in Bougainville.

Appointments to Constitutional Office-holders and Heads of Services

43. The bodies established by or under the Bougainville Constitution to make appointments of Bougainville judges, other constitutional office-holders, and heads of the Bougainville Police and any body equivalent to the Correctional Institutional Services shall include two nominees of the National Government.

Bougainville Salaries and Remuneration Commission

44. (a) The autonomous Bougainville Government may establish its own independent Salaries and Remuneration Commission under the Bougainville Constitution to recommend the salaries and other conditions of elected leaders, Constitutional officeholders and statutory heads (including heads of the Bougainville Police and any body equivalent to the Correctional Institutional Services) appointed under that Constitution; the autonomous Bougainville Government will meet any additional costs.

(b) The recommendations made by the Bougainville Salaries and Remuneration Commission will take full account of advice from the National Salaries and Remuneration Commission concerning the maintenance of relativities of pay and conditions with those for similar offices in other parts of Papua New Guinea and at the National level.

(c) The Bougainville legislature will have the power to accept or reject (but not to amend) recommendations from the Bougainville Salaries and Remuneration Commission.

45. (a) The National Salaries and Remuneration Commission will continue to recommend the salaries and other conditions of elected leaders, Constitutional officeholders and statutory heads appointed under the Bougainville Constitution until and unless the autonomous Bougainville Government establishes its own Salaries and Remuneration Commission.

(b) The autonomous Bougainville Government will be represented on the National Commission when it deals with positions under the Bougainville Constitution.

5. DIVISION OF POWERS AND FUNCTIONS

TWO LIST SYSTEM FOR DIVIDING POWERS AND FUNCTIONS

Basis for Drafting Lists in Constitutional Laws

46. Powers and functions will be divided between the National Government and the autonomous Bougainville Government by allocation to two comprehensive lists.

47. Those lists will be as exhaustive as possible of known and identifiable powers and functions of government.

48. The parties may be required to further consult and agree on issues that arise during the drafting of the constitutional amendments relating to how particular powers are to be described and where particular aspects of powers and functions belong.

49. The Constitutional Laws implementing this Agreement will provide an agreed mechanism to deal with possible overlap or conflict between the two lists.

National Government List of Powers and Functions

50. Consistent with national sovereignty, the National Government will exercise powers and functions on the National Government list in relation to Papua New Guinea as a whole, including Bougainville.

51. The agreed National Government list is as follows:

- Defence;
- Foreign relations;
- Immigration;
- Highly migratory and straddling fish stocks;
- Central Banking;
- Currency;
- International civil aviation;
- International shipping
- International trade;
- Posts;
- Telecommunications;
- Powers required for direct implementation of the National *Constitution*, as amended in implementation of this Agreement (for example, citizenship, national elections);
- All other powers for which the National Government is responsible under other provisions of this Agreement.

Bougainville List of Powers and Functions

52. The list of powers and functions of the autonomous Bougainville Government will:

    (a) include all known or identifiable powers not on the National Government list, beginning with the powers that have been available to provincial governments under the National *Constitution*;

    (b) be developed during the drafting of the Constitutional Laws implementing this Agreement.

53. The Bougainville list will include the power to decide on foreign investment applications for Bougainville, and the autonomous Bougainville Government may establish its own administrative mechanism in relation to foreign investment matters for Bougainville.

Bougainville to Respect National Government's International Obligations

54. The powers and functions of the autonomous Bougainville Government will be subject to Papua New Guinea's international obligations and human rights:

    (a) existing international obligations of the National Government will remain in place;

    (b) the National Government will consult the autonomous Bougainville Government before new obligations are entered into.

55. For the sake of clarity, the parties agree that the international obligations which apply to Bougainville include treaties and other written international agreements to which the National Government is or becomes a party.

56. The National Government and the autonomous Bougainville Government will resolve any differences over Papua New Guinea's obligations arising from generally accepted rules of international law through the agreed dispute resolution procedures.

Subjects Not Now Known or Identified

57. Consistent with the agreed process for the transfer of powers, any subject not listed on either list will remain initially with the National Government, provided that:

    (a) where either of the Governments wishes to legislate on a subject which is not clearly on either list, it will consult the other with a

view to reaching agreement on which government should be responsible for the subject;

(b) if either Government passes a law on an unlisted subject, then the other may, if it disagrees, contest it through the agreed dispute settlement procedures;

(c) any dispute over which of the Governments is responsible for a power or function will be resolved by applying the principles governing the division of powers in this Agreement.

Transfer or Delegation of Powers and Functions

58. Either Government may, by agreement, transfer or delegate powers and functions, including financial powers and functions, to the other.

6. AGREED ARRANGEMENTS CONCERNING EXERCISE OF NATIONAL GOVERNMENT POWERS IN RELATION TO BOUGAINVILLE

59. Powers and functions on the National Government list shall be exercised in relation to Bougainville in accordance with the arrangements set out in this Agreement.

(a) DEFENCE

60. The National Government will exercise this responsibility in Bougainville in accordance with this agreement and arrangements made under it.

61. The Papua New Guinea Defence Force (PNGDF) remains a national organization which recruits throughout Papua New Guinea.

Maritime and Border Surveillance, Search and Rescue, Assistance in Natural Disasters, etc.

62. (a) The PNGDF will continue to assist in meeting Papua New Guinea's international obligations as well as carrying out maritime and border surveillance and enforcement.

    (b) The National Government will be able to send PNGDF personnel to Bougainville for purposes of search and rescue and assistance in natural disasters and other humanitarian emergencies in response to requests from the autonomous Bougainville Government, or by giving prior notice to agreed points of contact in Bougainville.

63. (a) The parties will co-operate in assisting the PNGDF to carry out the above activities.

    (b) In the interests of transparency and mutual confidence-building, the National Government and the autonomous Bougainville Government will make arrangements for officials of the autonomous Bougainville Government to participate actively in the Bougainville-based aspects (including maritime aspects) of the above activities.

Other Activities

64. After the withdrawal of the PNGDF from Bougainville in accordance with the agreed weapons disposal plan, other PNGDF activities in Bougainville will be on a co-operative basis following consultation between the autonomous Bougainville Government and the National Government.

65. (a) The parties will conclude an agreed arrangement that, in respect of land-based activities and facilities in Bougainville, they accept that -

(i) the PNGDF requires immediate access to wharves, airfields, refueling, stores and associated facilities;

(ii) the National Government has no immediate plans for the PNGDF to have facilities, a base or a permanent presence in Bougainville after phased withdrawal in implementation of the agreed plan for weapons disposal;

(iii) the National Government will consult the autonomous Bougainville Government before finalising any plans to develop any of the above for the PNGDF in Bougainville; and

(iv) PNGDF personnel in Bougainville after phased withdrawal in implementation of the agreed weapons disposal plan will be unarmed.

(b) While the agreed arrangement will not be embodied in the National *Constitution* or an Act of the National Parliament, any disputes over it may be subject to the agreed disputes resolution procedures.

66. The parties will meet at an early, mutually convenient time to consider developing an agreed plan for civic action by the PNGDF to assist in restoration and development in Bougainville.

67. The need for any additional PNGDF facilities in Bougainville will be addressed in the agreed five-yearly reviews.

Implementation

68 (a) The National Government and the autonomous Bougainville Government will establish agreed procedures to give effect to the above.

(b) Consultations and resolution of any disputes over defence will be in accordance with these provisions and the agreed dispute resolution procedures.

(b) FOREIGN RELATIONS

69. The two Governments will establish mechanisms for consultation in agreed areas of foreign affairs.

Regional Organisations

70. The National Executive Council may allow Bougainville to send a representative or observer to regional meetings and organisations.

71. The autonomous Bougainville Government may nominate a representative to be included in National Government delegations to regional meetings and organisations of clear special interest to Bougainville.

72. The autonomous Bougainville Government will meet any additional costs arising from its participation.

International Agreements – Bougainville's Role

73. The autonomous Bougainville Government may request the National Government's assistance or concurrence through an agreed mechanism for the autonomous Bougainville Government to participate or engage directly in the negotiation of international agreements of particular relevance to Bougainville.

74. The autonomous Bougainville Government will respect the National Government's authority regarding international agreements.

Future Treaties

75. An international agreement negotiated or signed with a purpose of altering the agreed autonomy arrangements will take effect only with the agreement of both the National Government and the autonomous Bougainville Government.

76. If a disagreement arises between the National Government and the autonomous Bougainville Government as to whether an international agreement has been negotiated or signed with such a purpose, the matter will be resolved through the agreed dispute resolution procedures.

Border Agreements

77. The autonomous Bougainville Government will have a representative in National Government Delegations engaged in the negotiation of new border agreements with Solomon Islands.

78. Future border agreements (other than those concerning defence or national security aspects) which affect the jurisdiction of the autonomous Bougainville Government will take effect only by agreement between the National Government and the autonomous Bougainville Government.

Sporting and Trade Missions

79. The two Governments will consult over appropriate forms of cooperation for Bougainville to participate or engage in international cultural exchanges; trade, investment and tourism promotion; and sport.

(c) IMMIGRATION - VISAS AND WORK PERMITS

80. The autonomous Bougainville Government may recommend names to the National Government for inclusion on or removal from the Visa Warning List

81. Applications for Work Permits and Employment Visas for Bougainville will be referred by the relevant National Government agency to the autonomous Bougainville Government for recommendation.

82. The autonomous Bougainville Government may submit lists of occupations and industries for which Work Permits and Employment Visas should not be issued for Bougainville.

83. The autonomous Bougainville Government will establish appropriate machinery for implementation, including the sharing of information.

(d) QUARANTINE

84. The autonomous Bougainville Government may act as agent for the National Government in providing quarantine services

(e) FISHERIES

85. The National Government will provide for the autonomous Bougainville Government to be represented on:

    (a) delegations negotiating access and other fisheries agreements regarding Bougainville waters and waters beyond the guaranteed three nautical mile limit and within the Exclusive Economic Zone and the continental shelf associated with Bougainville territory; and

    (b) bodies responsible for determining total allowable catches, licence numbers and reservation of licenses for domestic fishers in such waters.

86. An agreed formula (based on derivation less costs) will provide for National Government fishing revenues from fishing in those waters to be distributed to the autonomous Bougainville Government.

87. The autonomous Bougainville Government will decide on the allocation of an agreed quota of domestic fishing licenses for highly migratory and straddling fish stocks.

88. The autonomous Bougainville Government will be responsible for the sustainable management of other fisheries in Bougainville's waters.

(f) CENTRAL BANKING RESPONSIBILITIES

89. The National Government will makes its best efforts to assist the autonomous Bougainville Government assume powers to supervise non-banking financial institutions.

90. The National Government will make its best efforts to assist in the establishment of a commercial bank in Bougainville.

91. As part of the agreed review process, the National Government and the autonomous Bougainville Government will consult on what other central banking responsibilities it might be appropriate for Bougainville to assume after fiscal self-reliance. The National Government will then make its best efforts to assist Bougainville assume those powers agreed upon.

(g) INTERNATIONAL CIVIL AVIATION, INTERNATIONAL SHIPPING, INTERNATIONAL TRADE, AND POSTS

92. The National Government will delegate control of aspects of international civil aviation, international shipping, international trade, and posts to the autonomous Bougainville Government, including:

(a) management of non-aviation aspects of airport terminals in Bougainville;

(b) management of postal services;

(c) issuing of Bougainville stamps, provided they display the words "Papua New Guinea"; and

(d) other aspects as may be agreed from time to time.

(h) TELECOMMUNICATIONS

93. The parties agree on the need to facilitate the development of a telecommunications system capable of reaching people throughout Bougainville, and will co-operate to bring about the development of such a system, including such private sector participation as may be appropriate and agreed.

94. The regulatory and legislative regime, including licensing, administered by PANGTEL will apply to the development of telecommunications in Bougainville, unless the National Government and the autonomous Bougainville Government otherwise agree.

95. Within the PANGTEL legislative and regulatory regime, the autonomous Bougainville Government may itself or by agreement with a third-party telecommunications carrier provide telecommunications services in Bougainville.

96. The National Government and the autonomous Bougainville Government will consult with a view to ensuring that Bougainville's interests are taken into account –

(a) in respect of privatization or changes to the legislative and regulatory regime for telecommunications; and

(b) if the autonomous Bougainville Government wishes to increase the powers and functions available to it in relation to telecommunications in Bougainville,

bearing in mind available technology, the economic interests of other parts of Papua New Guinea, and relevant aspects of national security.

97. In the event that the autonomous Bougainville Government sees a need to change existing laws and policy or wishes to assume additional powers and functions in respect of telecommunications, the autonomous Bougainville Government or the National Government may refer the matter to the joint supervisory body.

98. The joint supervisory body may, by agreement, appoint a panel of experts to prepare a report, bearing in mind the mutual benefits Bougainville and the rest of Papua New Guinea seek to pursue through their joint creation of the agreed autonomy arrangement as a whole.

99. The membership of the panel will be mutually agreed; the costs will be shared; the report, which will be submitted by an agreed date, may be tabled in the National Parliament and the Bougainville legislature.

100. (a) Any proposal for a telecommunications carrier in Bougainville to develop its own international links will be subject to the national legislative and regulatory regime.

(b) Any differences between the autonomous Bougainville Government and the National Government over such a proposal or a relevant provision of the legislative and regulatory regime will be resolved through consultation, the expert panel and, if differences persist, through the agreed dispute resolution procedure.

7. TRANSFER OF POWERS AND FUNCTIONS

(a) PROCESS FOR TRANSFER

Initiating Transfers

101. Powers and functions will be transferred from the National Government to the autonomous Bougainville Government, which will initiate the process, taking full account of needs and capacity, by notifying and consulting the National Government in advance.

Initial Powers and Functions

102. The autonomous Bougainville Government will be established with at least the same powers and functions as the Bougainville Interim Provincial Government.

103. The Bougainville Interim Provincial Government will give the National Government reasonable advance notice of any powers or functions to be transferred or institutions to be established by or under the Bougainville Constitution in the first twelve months after the establishment of the autonomous Bougainville Government.

Notice of Additional Transfers

104. The autonomous Bougainville Government will give the National Government at least twelve months notice of its intention to seek the transfer of any additional power or function.

Implementation

105. (a) Closely linked powers and functions will be transferred together.

 (b) Any differences over such links or transfers will be resolved through the agreed dispute resolution procedure.

106. National laws will continue to apply in Bougainville until replaced by Bougainville laws.

107. If the capacity or economic circumstances affecting the resources necessary for a transfer of a power or function are such as to prevent effective exercise of that power or function, then the National Government and the autonomous Bougainville Government will consult with a view to preparing an agreed plan for overcoming any difficulties.

108. If differences arise in reaching agreement, implementing a plan, or as to whether the capacity or circumstances should delay the transfer, then either Government may seek to resolve the issues in dispute through the agreed dispute resolution procedures.

109. In addition to other agreed dispute resolution procedures, such procedures may include an agreement to appoint a panel of independent experts to make recommendations on issues concerning capacity or economic circumstances or the content or implementation of a plan.

110. The panel of experts may make recommendations on whether failure to reach agreement on capacity or economic circumstances or to implement a plan is on reasonable grounds.

111. The report of the panel of experts may then be taken into account in the dispute settlement process.

National and Regional Institutions and Services

112. (a) In any case of an institution or service which is organised on a regional or National basis and either the National Government or the autonomous Bougainville government believes that the personnel, assets or funding associated with the institution or service cannot be readily divided on a basis which is viable regionally, nationally and in Bougainville, then the National Government and the autonomous Bougainville Government will agree to:

    (i) a plan for achieving a mutually acceptable division; and/or

    (ii) an arrangement which ensures the existing organization continues, together with guaranteed access for the autonomous Bougainville Government and Bougainvilleans.

(b) An arrangement to share access to or use of an institution or service organised on a regional or National basis may make provision for cost-sharing.

(c) The above is not intended to prevent the autonomous Bougainville Government from establishing and supporting similar institutions or services of its own.

113. If differences arise over whether personnel, assets or funding of an institution or service can be readily divided or in agreeing or implementing a plan or agreement for shared access or use, they will be resolved through the agreed dispute resolution procedure.

Delegation of Powers over Public Service, Police and CIS

114. (a) Agreed arrangements for the delegation of powers over the Public Service, Police and CIS in Bougainville will be implemented by the National Government immediately on request from the Bougainville Interim Provincial Government (in consultation with the Bougainville People's Congress) or, when it is established, the autonomous Bougainville Government.

(b) The autonomous Bougainville Government may exercise its powers to establish a Bougainville Public Service, Police and CIS when agreed plans have been implemented.

Agreed Plans for Implementation

115. The National Government and the autonomous Bougainville Government will jointly prepare agreed plans for co-operating in implementing the transfer of powers and functions for which the autonomous Bougainville Government will become responsible.

116. (a) The agreed plans will be made up of criteria, indicators and targets of capacity and resources available to or required by the autonomous Bougainville Government that should be taken into account in making proper preparations for the transfer of particular powers and functions.

(b) Agreed plans in relation to the transfer of powers and functions over Police may provide for transfer to be gradual.

(b) ASSOCIATED ARRANGEMENTS

National Government Assets and Land

117. National Government assets and land will be transferred to the autonomous Bougainville Government at the same time as the powers and functions with which they are associated.

118. The National Government will have the right to retain such assets and land as may be required for its continuing responsibilities in relation to the same powers and functions.

119 The future of other National Government assets and land will be subject to future negotiation.

Privatisation Issues

120. The National Government will use its best endeavours to ensure that any future privatisation takes account of the agreed autonomy arrangements.

121. The National Government will use its best endeavours to ensure that any future privatisation takes account of the need to rebuild the infrastructure of Bougainville following the crisis, and may take steps to ensure that community service obligations relating to Bougainville, including restoration and development, are recognised by purchasers of privatised assets in Bougainville.

122. The National Government will use its best endeavours to ensure that potential purchasers are made aware of the capacity of the autonomous Bougainville Government to develop laws and policies that might impact on the operation of proposed privatised enterprises, and of the sensitive nature of unresolved issues regarding the economic and property rights of Bougainvilleans and their ability to participate in economic activity in Bougainville.

8. HUMAN RIGHTS

123. The autonomous Bougainville Government will have the power to provide additional guarantees of human rights in Bougainville, which do not abrogate the human rights provisions in the National *Constitution*.

124. The autonomous Bougainville Government will have the power to establish mechanisms for enforcement of human rights that do not abrogate the human rights provisions in the National *Constitution*.

125. The autonomous Bougainville Government will have the power to qualify human rights incidental to the exercise of its powers and functions under Section 38 of the National *Constitution*, except in relation to 'defence'.

126. Proceedings for the enforcement of human rights by residents of Bougainville may be commenced in Bougainville courts or institutions or the National Court.

127. The Supreme Court will remain the final court of appeal on human rights matters.

128. The National Government and the autonomous Bougainville Government will establish a joint commission to examine and report on the issues that would be involved in giving the autonomous Bougainville Government power to make laws permitting courts or Councils of Elders to require clan-groups to which persons convicted of criminal offences belong to meet customary, non-custodial obligations.

129. The terms of reference for the commission will direct it to have full regard for:

(a) the aspirations of Bougainvilleans for the integration of custom and introduced law;

(b) the national human rights regime;

(c) the justice system in Bougainville and Papua New Guinea as a whole; and

(d) the international human rights system and other relevant aspects of international law.

130. The joint commission will be established at the initiative of either Government; its membership will be mutually agreed; the costs of the commission will be shared.

131. The commission's report, which will be submitted by an agreed date, will be tabled for consideration in the National Parliament and the Bougainville legislature.

132. The National Government and the autonomous Bougainville Government will inform one another of the outcome of the debates in their respective legislatures, and co-operate in giving effect to mutually acceptable, practical follow-up action, as may be appropriate, through consultation, the joint supervisory body or the agreed five-yearly reviews.

133. The above procedures may also be used to follow-up on doubts about whether the autonomous Bougainville Government has power under the existing human rights provisions to make laws regulating or restricting the qualified rights other than laws made in accordance with Section 38 of the National *Constitution*.

9. FINANCIAL ARRANGEMENTS

(a) BASIC PRINCIPLES

134. The autonomous Bougainville Government will have sufficient revenue-raising powers available to it to become financially self-reliant.

135. Bougainville will continue to make a fair contribution to National Government costs – before fiscal self-reliance, through the National Government retaining control over company tax, Value Added Tax and customs duties in Bougainville; and after self-reliance, through a revenue-sharing formula.

136. Except as otherwise provided the additional costs involved in establishing and maintaining the agreed autonomy arrangements will be shared between the autonomous Bougainville Government and the National Government.

(b) TAXATION

137. The National Government will support the autonomous Bougainville Government in moving towards the goal of fiscal self-reliance, defined as the year in which the revenue from company tax, 70 per cent of Value Added Tax and customs duties is equal to the value of the recurrent grant on a sustainable basis.

138. (a) Revenue from company tax, customs duties and 70 per cent of Value Added Tax collected in Bougainville will go to a trust account for Bougainville and be credited against the recurrent grant at least until Bougainville achieves financial self-reliance.

(b) "Company tax" is understood for this purpose as tax on profits of companies whose principal place of business or main business activity is in Bougainville.

139. (a) When the autonomous Bougainville Government achieves fiscal self-reliance, revenues from these sources (in excess of the costs of recurrent activities calculated in accordance with the recurrent grant formula) will be shared between the National Government and the autonomous Bougainville Government so as contribute to both National and Bougainville development.

(b) The 5-yearly reviews of financial arrangements should be used to consider the issues involved in revenue sharing.

140. The National Government will continue to impose and collect personal income tax in accordance with the provisions below until such time as restoration is achieved.

141. (a) Revenue from personal income tax collected from Bougainville will be paid directly to a trust account for the autonomous Bougainville Government and distributed to the autonomous Bougainville Government on its request to be used to support development in Bougainville.

(b) The autonomous Bougainville Government will have the power to adjust the rate of personal income tax to apply in Bougainville by no more than five per cent.

142. The autonomous Bougainville Government will assume the powers and functions to impose, set rates of, and collect personal income tax when restoration is achieved.

143. Revenues from all other existing National Government taxes (including 30 per cent of Value Added Tax) collected in Bougainville will be paid direct to the autonomous Bougainville Government

144. The National Government will retain the power to set rates for company tax, Value Added Tax and customs. But after fiscal self reliance the autonomous Bougainville Government will have power to set rates and collect company tax; provided that the effective rates of company tax will not vary from the National Government's rate by more than five percentage points.

145. The autonomous Bougainville Government will have power to set rates or establish its own tax regime for all other existing National Government taxes (e.g. export tax, excise) and all taxes that have been available to provincial governments under the National *Constitution*.

146. The Internal Revenue Commission will initially collect all taxes for the autonomous Bougainville Government but the autonomous Bougainville Government will have the power to establish its own tax office to collect Bougainville taxes as well as, by agreement, company tax, Value Added Tax, and customs duties.

147. The autonomous Bougainville Government will be eligible for tax incentives available in the *Income (Company) Tax Act*.

148. Both the National Government and the autonomous Bougainville Government will have the right to audit taxes paid into the above trust accounts or collected on behalf of the other.

(c) GRANTS SYSTEM

149. Until the autonomous Bougainville Government becomes fiscally self-reliant, the National Government will provide grants to the autonomous Bougainville Government, including the following kinds of grants:

    (a) recurrent unconditional grants;

    (b) restoration and development grants;

    (c) specific purpose conditional grants, inciuding the recurrent grant for policing; and

    (d) the one-off Establishment Grant.

150. As the autonomous Bougainville Government's revenue increases, grants will decrease according to an agreed set of factors.

(d) RECURRENT GRANTS

151. The autonomous Bougainville Government will receive an annual unconditional grant to cover the recurrent costs of functions for which it is responsible including funding of newly transferred powers and functions, based on their costs.

152. The funding of maintenance and operational costs of former development projects will be subject to consultation when funding is sought for new projects.

153. These consultations will be based on mutual recognition of constraints on the National Government, the particular situation in Bougainville during the early phases of restoration, and cost sharing

154. The grant will be adjusted annually in the same manner as annual grants for a provincial government activity under the *Organic Law on Provincial Governments and Local-level Governments* - that is, by the percentage increase or decrease in the cost of living or by the percentage increase or decrease in the payments to the Consolidated Revenue Fund in the year two years before the year of grant.

155. The calculation and timely payment of the grant will be guaranteed by law (debt servicing and salary obligations must be paid first).

156. The grant will be cut only if seriously adverse economic conditions arise, requiring "across the board" cuts to the National Budget and by no more than the average of these cuts.

157. In years when overall public expenditures increase, the National Government will do its best to increase the recurrent grant to balance any cuts in previous years.

158. The autonomous Bougainville Government will have full control over use of this grant.

159. The autonomous Bougainville Government will prepare plans and consult the National Government in cases where it wants to reallocate funds in ways which affect the continued employment of public servants or other forward commitments.

(e) RESTORATION AND DEVELOPMENT GRANT

160. The autonomous Bougainville Government will receive an annual restoration and development grant no less than the 2001 Public Investment Programme (PIP) and adjusted upwards pro rata in accordance with the National PIP averaged over a rolling five year period.

161. An agreed Bougainville-controlled mechanism, including both Bougainville and National Government representation, will be established to coordinate the restoration and development program in Bougainville.

162. The National Government representation in that mechanism will be subject to review in the future review process.

(f) CONDITIONAL GRANTS

163. The National Government may offer to the autonomous Bougainville Government, conditional grants, for purposes:

(a) proposed by the National Government after consultation with the autonomous Bougainville Government and implemented after consultation and agreement between the Governments; or

(b) provided for in this Agreement.

(g) BORROWINGS – REVENUE RAISINGS

164 The autonomous Bougainville Government will have the power to raise loans after consultation with the National Government.

165. Domestic borrowing by the autonomous Bougainville Government will comply with Central Bank regulation of the banking system.

166. Overseas borrowings will require Central Bank approval.

167. Any proposed deficit in the Bougainville budget will require approval of the National Government Minister responsible for financial matters.

(h) ESTABLISHMENT GRANT

168. The National Government will mobilise funds for a 'one-off' establishment grant to the autonomous Bougainville Government, which may disburse it over more than one year.

169. The establishment grant will be additional to all other grants.

170. The autonomous Bougainville Government will use the revenue raised from personal income tax and excise in Bougainville in the first year of autonomy as counterpart funding for the establishment grant.

171. This revenue will be used for development purposes decided by the autonomous Bougainville Government.

(i) FOREIGN AID

172. The agreed arrangements for foreign relations will also apply to foreign aid (consultation mechanism, and Bougainville representation on delegations).

173. The National Government will do its best to obtain foreign aid to support restoration and development in Bougainville, and to facilitate the autonomous Bougainville Government's participation in managing aid projects.

174. The autonomous Bougainville Government will be able to obtain foreign aid.

175. The National Government will approve foreign aid secured by the autonomous Bougainville Government, which does not reduce the value of aid already available to Papua New Guinea – and subject to overriding foreign policy considerations.

176. The autonomous Bougainville Government will keep the National Government fully informed of its efforts to obtain foreign aid.

177. The National Government will co-operate with the autonomous Bougainville Government by negotiating such international agreements as may be required to finalise foreign aid prospects identified by the autonomous Bougainville Government.

(i) FISCAL ACCOUNTABILITY

178. The National *Constitution* will set out the requirements within which the Bougainville Constitution will establish a framework for orderly management of the autonomous Bougainville Government's financial and other resources.

179. This framework will include requirements that the autonomous Bougainville Government will do the following in accordance with law:

(a) raise revenues, including loans, and manage National Government grants;

(b) approve and administer annual budgets (and, where appropriate, supplementary budgets), comprising estimates of revenue and expenditure, and appropriations for the main functions of government;

(c) make expenditures;

(d) maintain proper transparent and accurate accounts, compatible with international standards;

(e) ensure that accounts are subject to regular audits additional to audits by the National Auditor-General (or his agents); and

(f) provide for a public accounts committee in the Bougainville legislature, which shall receive, consider and make recommendations on auditors' reports.

180. The National *Public Finance Management Act* will continue to apply to the autonomous Bougainville Government's finances until and unless the autonomous Bougainville Government makes a Bougainville law (or laws) in accordance with the framework for management of financial and other resources.

181. The Bougainville Constitution may make provision for exceptional circumstances in which the autonomous Bougainville Government may find it necessary to raise revenues or make public expenditures without the Bougainville legislature's prior approval (for example, if the budget for a particular year is not passed in good time).

182. Grants provided to the autonomous Bougainville Government will be subject to audit by the Auditor-General established under the National *Constitution*.

(k) FOLLOW-UP TO AUDITS

183. Should any audit carried out by the National Government pursuant to this agreement disclose systematic and widespread abuse (or misuse) of funding provided to the autonomous Bougainville Government by way of Recurrent or Conditional Grant then the following steps will take place -

 (a) the National Government will advise the autonomous Bougainville Government of the details of the abuse;

 (b) the autonomous Bougainville Government will immediately investigate the concerns raised by the National Government and will take appropriate steps to remedy the situation as soon as is reasonably possible;

 (c) should the autonomous Bougainville Government, after investigation, disagree with the National Government's concerns or if the National Government is not satisfied with the response of the Bougainville Government they will consult with each other to resolve the differences;

 (d) if the consultations do not resolve the matter the National Auditor General and the auditor responsible for auditing accounts on behalf of the autonomous Bougainville Government will consider the matters in question and provide a report making joint recommendations to resolve these matters;

 (e) the autonomous Bougainville Government will implement the reasonable joint recommendations of both auditors to their satisfaction;

 (f) if the autonomous Bougainville Government fails to attend to the recommendations within a reasonable time, the National Government may withhold the further release of funds (other than the costs of essential services, such as salaries and medical supplies) until such time as the recommendations have been attended to;

 (g) should the National Government or the autonomous Bougainville Government disagree on reasonable grounds as to the recommendations, or should there be a dispute as to whether the autonomous Bougainville Government has implemented the recommendations, recourse may be had to the agreed dispute resolution procedures.

10. PERSONNEL

(a) PROVISIONS APPLYING GENERALLY TO PUBLIC SERVICE, POLICE AND CORRECTIONAL INSTITUTIONAL SERVICES

Implementation as Packages

184. The agreed arrangements for the Public Service, Police and Correctional Institutional Services (CIS) in Bougainville will each be implemented as a package.

Application to Other Bodies

185. The arrangements applying to the Bougainville Public Service will also apply to the Teaching Service and all public authorities established by the autonomous Bougainville Government (except where special arrangements have been agreed to apply to Police and CIS).

Constitutional Basis

186. The National *Constitution* will be amended to allow the autonomous Bougainville Government to establish and to make laws regarding a Bougainville Public Service, Police and Bougainvillle equivalent to the CIS ('Bougainville CIS') consistent with this Agreement.

187. The Heads of the Bougainville Public Service, Police and CIS will be responsible to the autonomous Bougainville Government through a Minister (or equivalent) appointed under the Bougainville Constitution.

Recruitment, Employment and Industrial Relations

188. Bougainville law will provide for recruitment and terms and conditions of employment for the Bougainville Public Service, Police and CIS to be based on individual merit.

189. Bougainville will accept the National industrial relations system.

Oath of Allegiance

190. Members of the Bougainville Public Service, Police and CIS will swear allegiance to the Head of State of Papua New Guinea.

National Public Service, Police and CIS

191. The Papua New Guinea Public Service, Police and CIS will remain national organizations, which recruit throughout Papua New Guinea.

Co-operative Arrangements

192. The National Government and the autonomous Bougainville Government will agree to arrangements to:

(a) facilitate transfers, secondment and exchanges of personnel;

(b) provide for core training and personnel development programmes, together with utilization of common training facilities throughout Bougainville and the rest of Papua New Guinea; and

(c) provide for regular consultations between the most senior officers responsible for Public Service, Police and CIS matters in the National Government, the autonomous Bougainville Government and Provincial Governments, and other senior officers.

(b) PUBLIC SERVICE

Control

193. The Bougainville Public Service will be subject only to the control of the autonomous Bougainville Government through a Minister (or equivalent) of that Government.

Bougainville Law

194. (a) Bougainville law will provide for standards for management and control of public servants, work value criteria and standards for pay determination, as well as classification and grade structure compatible with those of the National Public Service.

(b) Bougainville laws on the above will be made following consultations with the National Government.

195. The National Government and the autonomous Bougainville Government, through their respective Ministers and responsible Public Service Heads, will consult with a view to reaching agreement before general pay increases which will impact on the National and Bougainville budgets.

196. The autonomous Bougainville Government will consult the National Government before making or amending the Bougainville Public Service General Orders (or their equivalent).

Institutional Arrangements

197. The autonomous Bougainville Government will consult the Head of the National Government Department responsible for National Public Service personnel matters before appointing the most senior Public Servant responsible for Public Service matters in Bougainville.

Information and Monitoring

198. (a) The National Government will monitor developments in the Bougainville Public Service.

(b) The autonomous Bougainville Government will keep the National Government informed about developments in the Bougainville Public Service, including proposed changes of policy and budgetary allocations for personnel, and facilitate monitoring by the National Government.

Constitutional Provisions for Appeal and Review of Public Service Matters

199 (a) The Bougainville Constitution will make provision for an independent body which will be responsible for reviewing decisions on personnel matters in relation to the Bougainville Public Service.

(b) The autonomous Bougainville Government will meet the costs of this body.

National Public Service Offices in Bougainville

200. The National Public Service will continue to establish positions and transfer personnel to Bougainville to carry out National powers and functions.

201. The autonomous Bougainville Government will co-operate with the National Government to ensure that such positions and personnel can be filled and operate efficiently and effectively.

Phased Implementation Plan, Interim Arrangements and Transitional Period

202. Until such time as the autonomous Bougainville Government establishes the Bougainville Public Service, the National Government will facilitate progress towards greater autonomy in the management of the Public Service in Bougainville through delegations by the Departmental Head responsible for Personnel Management matters in the National Public Service, to the Bougainville Administrator under current legislation.

203. These transitional arrangements will be implemented on receipt of a request from the Bougainville Interim Provincial Government or the autonomous Bougainville Government.

204. The National Government and the autonomous Bougainville Government will develop a recruitment and training plan for building Public Service capacity in Bougainville.

205. On the coming into force of the law establishing the Bougainville Public Service, a mutually agreed transitional period will be effected by the Act, during which period serving public servants will remain as members of the National Public Service. On conclusion of the transitional period, all of those public servants will become members of the Bougainville Public Service, other than any who choose not to leave the National Public Service. The National Government will be responsible for the accrued rights and entitlements of transferred public servants to the point of transfer. Those rights and entitlements will be fully portable.

206. During the transitional period, the National Public Service and the Bougainville Public Service will give proper consideration to the transfer of public servants in Bougainville who may wish to serve elsewhere in Papua New Guinea and the integration or secondment into the Bougainville Public Service of those members of the National Public Service who wish to continue to serve in the Bougainville Public Service.

207. (a) During the transitional period, the Bougainville Administrator, in consultation with the Secretary of the Department of Personnel Management, will plan for implementation of the Bougainville Public Service, including determination of:

(i) organization structures;
(ii) terms and conditions;
(iii) General Orders; and
(iv) manpower budgets.

(b) The transitional arrangements will include the development and publication of Bougainville General Orders to be executed by the Bougainville Administrator under powers of delegation granted under the *Public Services (Management) Act*.

208. The plan will be subject to the authority of the autonomous Bougainville Government.

209. The National *Public Services (Management) Act*, together with Bougainville General Orders, will apply in Bougainville until the autonomous Bougainville Government makes and implements equivalent legislation or General Orders of its own.

(c) POLICE

Control and Command

210. The Bougainville Police will be subject only to the control of the autonomous Bougainville Government through a Minister (or equivalent) of that Government.

211. The Bougainville Police will not be subject to command except in accordance with Bougainville law.

Head of Bougainville Police

212. (a) The Head of the Bougainville Police will be appointed and subject to removal for just cause by an independent commission established under the Bougainville Constitution, which will include two representatives of the National Government, one of whom will be the Commissioner of the Royal Papua New Guinea Constabulary (RPNGC) or his nominee.

(b) The head of the Bougainville Police will have a title other than Commissioner, and hold a rank below that of Commissioner of the RPNGC.

Functions of Bougainville Police

213. The Bougainville Police will be responsible for preserving peace and good order and maintaining and, as necessary, enforcing both National and Bougainville laws in an impartial and objective manner, and with full regard for human rights.

214. The National Government and the autonomous Bougainville Government will agree to arrangements for maintaining and enforcing National laws.

215. The National Government (working, where appropriate, through the RPNGC) will inspect and audit compliance of the Bougainville Police in respect of maintaining and enforcing National laws.

216. The autonomous Bougainville Government will facilitate these inspections and audits.

217. Any differences about agreed arrangements will be resolved through the agreed dispute resolution procedures.

Role of RPNGC

218. The RPNGC may itself exercise its functions in Bougainville.

219. The autonomous Bougainville Government and the Bougainville Police, and the National Government and the RPNGC, will develop appropriate agreed arrangements to facilitate the exercise of those functions.

220. The autonomous Bougainville Government and the Bougainville Police will provide all reasonable assistance to the RPNGC in the exercise of those functions.

221. The parties accept that the National Government has no immediate plans to redeploy Police Mobile Units or similar units to Bougainville after they have been withdrawn in accordance with the agreed weapons disposal plan.

222. After phased withdrawal, RPNGC Police Mobile Units or similar units will be deployed to Bougainville only after consultation (through procedures appropriate to the urgency of the particular situation) and consensus is reached between the National Government and the autonomous Bougainville Government in support of that deployment.

223. The Bougainville Police will not develop the equivalent of an armed Police Mobile Unit.

Training, Rank Structure and Uniforms of Bougainville Police

224. Bougainville law for the Bougainville Police will provide for the following:

(a) core training and personnel development arrangements consistent with those of the RPNGC; and

(b) rank structure, and terms and conditions of employment consistent with those of the RPNGC.

225. The uniforms, vehicles, premises and stationery of the Bougainville Police will include the National Emblem or name.

Co-operative Policing

226. The co-operative arrangements for the Bougainville Police will include:

(a) mutual assistance in law enforcement;

(b) compatible policing standards, procedures and equipment, including co-operative procurement arrangements.

227. The Bougainville Police and the RPNGC will develop agreed arrangements for continuing access by the Bougainville Police to specialist services (for example, forensic, criminal investigation, etc.) and other support from the RPNGC.

228. The parties recognise that these agreed policing arrangements will require a balance between the following needs:

   (a) for the fundamentals of criminal law to be consistent and capable of consistent enforcement throughout Papua New Guinea; and

   (b) for Bougainville to be able to develop its own approaches to criminal law.

Funding

229. (a) The National Government will provide the autonomous Bougainville Government with funding by way of guaranteed annual conditional grants for the specific purpose of meeting the recurrent costs of policing in Bougainville.

   (b) The minimum grant will be sufficient to support existing levels of police activities in Bougainville.

   (c) The grant will be adjusted annually on the same basis as the adjustment of the recurrent grant.

230. The National Government will provide the autonomous Bougainville Government with guaranteed conditional grants intended to:

   (a) restore civilian peacetime policing in Bougainville, one measure to be the reaching of normal levels of policing elsewhere in Papua New Guinea, such funding to be taken into account in the calculation of the amount of the grant for recurrent costs of policing in subsequent years;

   (b) provide for further development of policing services in Bougainville.

231. Grants to the autonomous Bougainville Government in relation to policing will be taken into account when determining progress towards fiscal self-reliance by the autonomous Bougainville Government.

232. The additional costs of establishing and maintaining the Bougainville Police outside the RPNGC will be equitably shared between the National Government and the autonomous Bougainville Government.

Emergencies and Other Support

233. The Bougainville Police and the autonomous Bougainville Government will maintain order and enforce the law on behalf of Bougainville and the State as a whole and shall seek support and assistance from other appropriate state agencies to deal with threats or situations in which that support or assistance is required.

234. On the request of the autonomous Bougainville Government, the RPNGC may deploy additional police to assist the Bougainville Police.

Transitional Arrangements for Bougainville Policing

235. (a) Until such time as the autonomous Bougainville Government establishes the Bougainville Police under the Bougainville Constitution, the National Government will facilitate progress towards greater autonomy in the policing arrangements in Bougainville through delegations by the Police Commissioner of administrative and operational powers and functions to the Provincial Police Commander in Bougainville.

(b) These arrangements will be implemented on receipt of a request from the Bougainville Interim Provincial Government.

236. The Bougainville Police will initially be made up of RPNGC personnel who will serve on a basis to be agreed.

237. (a) The RPNGC Commissioner will consult the executive of the autonomous Bougainville Government on the appointment of the Police Commander in Bougainville and appoint their nominee.

(b) The National Government will make the delegations of administrative and operational powers and functions in such a way that the Commander is, in practice, responsible (through a Minister or equivalent) to the Bougainville Interim Provincial Government, and, when it is established, the autonomous Bougainville Government.

238. The National Government and the autonomous Bougainville Government will develop a recruitment and training plan for building Bougainville Police capacity.

239. The RPNGC and the Bougainville Police will give reasonable consideration to the transfer of RPNGC personnel in Bougainville who wish to serve elsewhere in Papua New Guinea and the integration or secondment into the Bougainville Police of those members of the RPNGC who wish to serve in the Bougainville Police.

240. The National *Police Act* will continue to apply in Bougainville, subject to necessary modifications, until the autonomous Bougainville Government passes its own legislation concerning police.

(d) CORRECTIONAL INSTITUTIONAL SERVICES

Control

241. The Bougainville CIS will have the same relationship with the autonomous Bougainville Government as the National CIS has with the National Government.

Head of Bougainville CIS

242. (a) The Head of Bougainville CIS will be appointed and subject to removal for just cause by an independent commission established under the Bougainville Constitution, which will include two representatives of the National Government, one of whom will be the Commissioner of the National CIS or his nominee.

(b) The Head of the Bougainville CIS will have a title other than 'Commissioner', and hold a rank below that of Commissioner of the National CIS.

Functions of Bougainville CIS

243. The Bougainville CIS will be responsible for containing and rehabilitating offenders on behalf of the National Government and the autonomous Bougainville Government in accordance with law and Papua New Guinea's international obligations, including humane treatment of prisoners and respect for human rights.

244. The National Government and the autonomous Bougainville Government will agree to arrangements for co-operating in the containment, rehabilitation and transfer of prisoners, including escapees, held under one another's laws.

245. The National Government (working, where appropriate, through the National CIS) will inspect and audit compliance of the Bougainville CIS in respect of maintaining and enforcing National standards and laws.

246. The autonomous Bougainville Government will facilitate these inspections and audits.

247. Any differences about agreed arrangements will be resolved through the agreed dispute resolution procedures.

Training, Rank Structure and Uniforms of Bougainville CIS

248. Bougainville law for the Bougainville CIS will provide for the following:

(a) core training and personnel development arrangements consistent with those of the National CIS; and

(b) rank structure, and terms and conditions of employment consistent with those of the National CIS.

249. The uniforms, vehicles, premises and stationery of the Bougainville CIS will include the National Emblem or name.

Co-operation

250. (a) The co-operative arrangements for the Bougainville CIS will promote compatible professional standards, including procedures concerning storage, access and use of weapons.

(b) The Bougainville CIS and the National CIS will co-operate in weapons procurement; the Bougainville CIS will not have high-powered weapons.

251. (a) The Bougainville CIS and the National CIS will develop agreed arrangements for continuing access by the Bougainville CIS to specialist services and exchanges (for example, training, riot drills, exchanges of personnel for professional development within Papua New Guinea and internationally).

(b) The National CIS may deploy personnel to Bougainville on receipt of a request for assistance from the Bougainville CIS.

252. The parties recognise that these agreed CIS arrangements will require a balance between the following needs:

(a) for consistent standards and application throughout Papua New Guinea; and

(b) for Bougainville to be able to develop its own approaches to containment and rehabilitation of offenders.

Funding

253. The recurrent costs of the Bougainville CIS will be met from the annual unconditional recurrent grant to the autonomous Bougainville Government.

254. The National Government will provide the autonomous Bougainville Government with guaranteed conditional grants intended to:

(a) support restoration of civil authority in Bougainville, one measure to be the reaching of normal levels of CIS elsewhere in Papua New Guinea, such funding to be taken into account in the calculation of the amount of the recurrent grant in subsequent years;

(b) provide for further development of CIS in Bougainville.

255. The additional costs of establishing and maintaining the Bougainville CIS outside the National CIS will be equitably shared between the National Government and the autonomous Bougainville Government.

Transitional Arrangements for Bougainville CIS

256. (a) Until such time as the autonomous Bougainville Government establishes the Bougainville CIS under the Bougainville Constitution, the National Government will facilitate progress towards greater autonomy in the CIS arrangements in Bougainville through delegations by the CIS Commissioner of administrative and operational powers and functions to the Provincial CIS Commander in Bougainville.

(b) These arrangements will be implemented on receipt of a request from the Bougainville Interim Provincial Government or the autonomous Bougainville Government.

257. The Bougainville CIS will initially be made up of National CIS personnel who will serve on a basis to be agreed, subject to the availability of funding.

258. (a) The National CIS Commissioner will consult the executive of the autonomous Bougainville Government on the appointment of the CIS Commander in Bougainville and appoint their nominee.

(b) The National Government will make the delegations of administrative and operational powers and functions in such a way that the Commander is, in practice, responsible (through a Minister or equivalent) to the Bougainville Interim Provincial Government, and, when it is established, the autonomous Bougainville Government.

259. The National Government and the autonomous Bougainville Government will develop a recruitment and training plan for building capacity of the Bougainville CIS.

260. The National CIS and the Bougainville CIS will give reasonable consideration to the transfer of National CIS personnel in Bougainville who wish to serve

elsewhere in Papua New Guinea, and the integration or secondment into the Bougainville CIS of those members of the National CIS who wish to serve in the Bougainville CIS.

261. The National *Correctional Service Act* will continue to apply in Bougainville, subject to necessary modifications, until the autonomous Bougainville Government passes its own legislation concerning CIS.

262. The autonomous Bougainville Government will assume responsibility for CIS in conjunction with assuming responsibility for Police.

11. INTERGOVERNMENTAL RELATIONS

Joint Supervisory Body

263. The autonomous Bougainville Government and the National Government will consult over implementation of autonomy through a joint supervisory body, which will also be used to consult with a view to resolving any disputes.

264. The joint supervisory body (whose name will be mutually determined) will consist of equal numbers of members representing the National Government and the autonomous Bougainville Government; its functions will be to:

    (a) oversee implementation of arrangements for the establishment and operation of the autonomous Bougainville Government;

    (b) prepare draft legislation to further the objectives of this Agreement;

    (c) finalise matters of detail; and

    (d) resolve any differences or disputes.

Settling Disputes

265. The autonomous Bougainville Government and the National Government will try to resolve disputes by consultation, or, where required, through mediation or arbitration.

266. If a dispute cannot be resolved in one of the above ways, then it may be taken to court.

267. The details of dispute resolution procedures, including their application to particular provisions, will be specified and integrated during drafting of Constitutional Laws to give legal effect to this Agreement.

No Suspension or Withdrawal of Powers

268. The National Government will not have the power to withdraw powers from the autonomous Bougainville Government or suspend it.

Consultations

269. If consultation is required it will proceed through the following steps:

(a) timely communication of views in writing to a specified point of contact;

(b) adequate opportunity to respond in a similar way;

(c) where there are differences, meaningful exchange of views within an adequate, agreed or specified time-frame, either orally or in writing, with a view to reaching agreement; and

(d) clear, written record of outcome (either agreement or different views), provided for all parties.

12. STATES OF EMERGENCY

270. The Bougainville Constitution will specify the procedures which the autonomous Bougainville Government will follow in dealing with situations in Bougainville similar to those covered in the emergency provisions of the National *Constitution*.

271. In circumstances where it is necessary to declare a state of emergency in Bougainville, the autonomous Bougainville Government will be responsible for initiating a request.

272. The National Government and the autonomous Bougainville Government will co-operate in the management of a declared state of emergency.

273. If it is necessary to declare a state of emergency in Bougainville and the autonomous Bougainville Government fails to initiate a timely request, the National Government will use its best endeavours to consult the autonomous Bougainville Government.

274. Only if the situation is urgent and consultation is not practicable will the National Government be able to declare a state of emergency in Bougainville.

275. The parties acknowledge that the power to initiate and declare states of emergency which apply nationally, or substantially in other parts of Papua New Guinea or in relation to a declared war will remain a National Government responsibility (states of emergency which apply only in other parts of Papua New Guinea will not be affected by this agreement).

13. JUDICIARY

Bougainville Courts

276. The National *Constitution* will be amended to allow the Bougainville Constitution to provide for the establishment within the National Judicial System of courts and tribunals in Bougainville ranging from courts with a similar jurisdiction to Village Courts to a court of similar jurisdiction to the National Court.

277. The name "National Court" shall not be used for any Court established by Bougainville.

278. The highest court in Bougainville will have such jurisdiction, consistent with the agreed autonomy arrangements, as may be provided under the Bougainville Constitution.

Jurisdiction of Bougainville Courts

279. Until Bougainville establishes a court of similar jurisdiction to the National Court with power to hear cases under the *Criminal Code*, the application and enforcement of the *Criminal Code* will remain solely with the National Court.

280. Subject to these arrangements, laws made by the National and Bougainville Governments will be enforceable in one another's courts.

281. The highest Court established under Bougainville law will have the power to make orders in the nature of prerogative writs and such other orders as are necessary to do justice in the circumstances of a particular case.

282. The National Government and the autonomous Bougainville Government will consult with a view to legislating for Bougainville courts and tribunals to exercise additional jurisdiction under National law.

Appeals

283. The highest Bougainville Court may have the power to review the exercise of judicial authority by courts and tribunals established under Bougainville law.

284. The National Court will remain an alternative court of review and appeal (that is, alternative to the highest appeal court in Bougainville; but not vice-versa)

285. The Supreme Court of Papua New Guinea will be the final court of appeal for Bougainville.

Interpretation of National Constitutional Provisions and of Bougainville Constitution

286. The Bougainville Constitution may provide that questions of interpretation of the Bougainville Constitution will be taken directly to the highest Bougainville court, and may be appealed to the Supreme Court.

287. Questions of interpretation of the agreed autonomy arrangements in the National *Constitution* or Organic Laws will be taken directly to the National or Supreme Court, as appropriate.

Appointment of Judges for Bougainville Courts

288. Appointment and removal of Bougainville judges will be non-political, with two representatives of the National Judicial and Legal Services Commission serving on the appointments body

Operation of National Judicial System

289. The National Judicial System will continue to carry out its responsibilities in Bougainville.

290. The autonomous Bougainville Government will provide all reasonable assistance to the National Judicial System in the exercise of its functions.

291. The National and Bougainville Court administrations will cooperate with one another.

292. Appointments to the National Judiciary will be open to qualified persons from throughout Papua New Guinea.

Phased Implementation Plan

293. The National Government and the autonomous Bougainville Government will develop and implement a plan for restoring and building the capacity of courts in Bougainville, including courts at village level, as provided in the *Lincoln Agreement*.

Costs of Establishing Bougainville Courts

294. The autonomous Bougainville Government will meet the costs of establishing c urts of its own above the level of the District Court as well as special tribunals.

14. CRIMINAL LAW

295. The autonomous Bougainville Government will have power to:

   (a) create and set penalties for offences incidental to the exercise of its agreed powers and functions; and

   (b) amend the *Summary Offences Act* and all other laws relating to criminal law as they apply in Bougainville, or to make equivalent laws of its own (the *Criminal Code* may only be amended as provided in the next paragraph).

296. The *Criminal Code* will be adopted by the autonomous Bougainville Government and may only be amended in its application to Bougainville on the following basis:

   (a) change to principles of the criminal law shall be evolutionary;

   (b) there will be no wholesale changes to the coverage of subjects by the criminal law;

   (c) there will be no amendment of the *Criminal Code* without proper consultation with the National Government;

   (d) the autonomous Bougainville Government and the National Government will establish a joint working group on Criminal Law to develop changes that work for both Bougainville and the rest of Papua New Guinea;

   (e) amendments to the *Criminal Code* by the autonomous Bougainville Government will be gazetted but will not come into effect without the agreement of the National Government;

   (f) the National Government may require further negotiation should it not accept the proposals for amendments made by the autonomous Bougainville Government; and

   (g) the agreed dispute resolution procedures will apply.

297. In the longer term, the autonomous Bougainville Government may seek to develop its own *Criminal Code* in consultation with the National Government, which will come into effect only upon the agreement of the National Government.

15. REGULAR REVIEWS OF AUTONOMY ARRANGEMENTS

298. The autonomous Bougainville Government and the National Government will jointly review the autonomy arrangements every five years and present the report of the review to the National Parliament and the Bougainville legislature.

299. The five-yearly, joint review of the autonomy arrangements will follow and consider separate reviews by independent experts of particular aspects, including:

    (a) the financial arrangements – grants, taxes and progress towards financial self-reliance;

    (b) the Bougainville public services and other aspects of public sector administration in Bougainville – inclusive of size, efficiency, effectiveness, and related matters;

    (c) technical and legal aspects, including issues arising from judicial interpretation, and the distribution of powers and functions; and

    (d) such other areas as the autonomous Bougainville Government and the National Government may agree.

300. The terms of reference for the reviews will specify that, unless otherwise agreed, they are intended to improve, clarify and strengthen the autonomy arrangements consistently with the objectives and principles in this Agreement

301. The Governments may, by agreement, defer the specialist reviews or incorporate the issues with which they deal in the general review.

302. The reports of the specialist reviews will include drafts or drafting instructions for the legislative amendments they recommend.

303. The reports of all reviews will be tabled in the National Parliament and the Bougainville legislature.

304. In the event that either the National Parliament or the Bougainville legislature passes the amendments proposed according to its own constitutional procedures and the other does not, then the autonomous Bougainville and National Governments will follow the procedures agreed for resolving disputes – up to the level of arbitration (points of law may go to the Supreme Court)

305. The arbitrator(s) cannot give directions to the National Parliament or the Bougainville legislature but may order the Governments to present a report in the National Parliament and the Bougainville legislature recording the views of both

Governments and containing their own recommendations on differences between them.

306. The two Governments may agree to additional reviews of any aspect of the autonomy arrangements at any time.

307. In addition to the above reviews, the two Governments will hold annual, wide-ranging consultations on the general operation of the autonomy arrangements.

308. Unless the two Governments agree to some other method, these consultations will be held through the joint supervisory body.

C. AGREED PRINCIPLES ON REFERENDUM

309. The National Government will move amendments to the National *Constitution* to guarantee a referendum on Bougainville's future political status.

310. The choices available in the referendum will include a separate independence for Bougainville.

311. (a) The amendments will provide that the outcome will be subject to ratification (final decision-making authority) of the National Parliament.

(b) The autonomous Bougainville Government and the National Government will consult over the results of the referendum.

312. (a) The constitutional amendments will guarantee that the referendum will be held:

- no earlier than 10 years and, in any case, no later than 15 years after the election of the first autonomous Bougainville Government;
- when the conditions listed below have been met;
- unless the autonomous Bougainville Government decides, after consultation with the National Government and in accordance with the Bougainville Constitution, that the referendum should not be held.

(b) The conditions to be taken into account include:

- weapons disposal; and
- good governance.

(c) The actual date of the referendum will be agreed after consultations by the autonomous Bougainville Government and the National Government.

313. (a) The benchmarks to be used in determining good governance will take account of internationally accepted standards of good governance as they are applicable and implemented in the circumstances of Bougainville and the rest of Papua New Guinea. These benchmarks include democracy and opportunities for participation by Bougainvilleans, transparency, and accountability, as well as respect for human rights and the rule of law, including the *Constitution of Papua New Guinea*.

(b) The National Government and the autonomous Bougainville Government will co-operate in ensuring progress towards the achievement and maintenance of these benchmarks.

(c) The agreed procedures for review and resolution of disputes will be used to determine whether Bougainville has achieved the standard of good governance intended by this Agreement.

314. (a) The referendum on Bougainville's future political status will be conducted in accordance with agreed constitutional arrangements.

(b) The constitutional amendments and any Organic Law required to implement the agreed referendum arrangements will be introduced into the National Parliament together, and drafted to take effect at the same time.

315. Eligibility to vote in the referendum will be the same as for national elections in Bougainville plus non-resident Bougainvilleans (detailed criteria to be finalised through consultation).

316. (a) The question(s) to be asked in the referendum should be clear and agreed by the National Government and the autonomous Bougainville Government.

(b) The choices should be presented so as to facilitate a clear result.

317. The referendum will be free and fair.

318. The National Electoral Commission and the authority responsible for conducting elections in Bougainville will be jointly responsible for conducting the referendum.

319. International observers will be invited to observe the conduct of the referendum.

320. This agreement will be given effect through Constitutional Laws.

321. The National Government and the autonomous Bougainville Government will consult and co-operate to ensure that the conditions intended to apply before the referendum are met.

322. The agreed dispute resolution mechanism will be used to resolve any differences concerning any issues related to holding the referendum, including issues concerning the questions or method of choice in referendum, and the actual date of the referendum.

323. Consultations over the referendum will include:

(a) timely communication of views in writing to a specified point of contact;

(b) adequate opportunity to respond in a similar way;

(c) where there are differences, meaningful exchange of views within an adequate, agreed and specified time-frame, either orally or in writing, with a view to reaching agreement; and

(d) clear, written record of outcome (either agreement or different views), provided for all parties.

324. Agreed plans for weapons disposal will be fully implemented before elections for the autonomous Bougainville Government are held.

D. AMENDMENT OF CONSTITUTIONAL ARRANGEMENTS FOR AUTONOMY AND REFERENDUM

325. The constitutional arrangements implementing this agreement may be amended only in accordance with both requirements (a) and (b) below:

    (a) after approval by the National Parliament in accordance with the amendment provisions contained in the National *Constitution*; and

    (b) (i) in the case of the referendum provisions, after a vote in which a two-thirds absolute majority of members of the Bougainville legislature vote in support; or

        (ii) in the case of the autonomy provisions, after a vote in which a simple majority of members of the Bougainville legislature vote in support.

326. Voting in the Bougainville legislature must be concluded before the second vote on the same Bill to amend is held in the National Parliament.

327. The National Government and the autonomous Bougainville Government will inform each other of any proposed amendments; consult over them through the agreed consultation procedures or the agreed five-yearly reviews before they are formally moved (or, in the case of Private Members' Bills put to the vote for the first time); and resolve any differences through the agreed dispute resolution procedures.

328. The constitutional provisions concerning the above entrenchment arrangements will themselves be subject to the above procedures and requirements.

E. WEAPONS DISPOSAL

1. ENDORSEMENT OF WEAPONS DISPOSAL PLAN

329. The Parties endorse the weapons disposal plan developed with ex-combatants and contained in the *Resolution on Weapons Disposal* adopted by the Peace Process Consultative Committee (PPCC) on 9th May 2001 (set out in the following pages), and will regard implementation in full accordance with the Plan as representing mutually acceptable compliance with the last paragraph of the *Agreed Principles on Referendum* (set out above).

PEACE PROCESS CONSULTATIVE COMMITTEE (PPCC) RESOLUTION ON WEAPONS DISPOSAL

Introduction

1. The PPCC welcomes the way in which the Bougainville Revolutionary Army (BRA) and the Bougainville Resistance Force (BRF) have come together, and acknowledges the positive foundation the *Rotokas Record* establishes for a comprehensive weapons disposal plan for Bougainville that is acceptable to all parties.

2. The PPCC reaffirms the commitment of all of the parties to implementation of the *Lincoln* and *Ceasefire Agreements*.

PPCC Sub-Committee

3. (a) The PPCC hereby establishes a sub-committee to develop, manage and implement weapons disposal in accordance with this Resolution. The agreed membership of the sub-committee will be as follows:

   Chairman: Director, United Nations Observer Mission on Bougainville (UNOMB), or his representative

   Deputy Chair: Commander, Peace Monitoring Group (PMG), or his representative

   Representatives of the following: the National Government
   the BRA
   the BRF

   (b) The sub-committee may, by agreement, co-opt other members, including representatives of other groups.

4. (a) The sub-committee will seek support for, and co-ordinate:

   i. an active joint programme to promote public awareness, understanding and support of weapons disposal;

   ii. development and implementation of this Resolution, including mechanisms to ensure location, identification, control, withdrawal from the community and secure storage of weapons, with special regard for factory-made arms and ammunition;

   iii. means of ensuring the full and accurate recording of weapons, and securing the co-operation and participation by individuals and other groups.

(b) The sub-committee shall take such account of the need for confidentiality as the parties may require for security at stage 1.

(c) The sub-committee shall resolve such differences as may arise in relation to implementation under this Resolution.

Implementation

5. Weapons disposal will be implemented in stages.

Stage 1

6. Stage 1 will begin immediately, initially in areas where there is no Defence Force or Police Mobile Unit presence. It will proceed in all areas as follows:

(1) Councils of Chiefs/Elders will inform UNOMB when the people in a particular area are ready for ex-combatants to disarm and re-integrate into the community, remaining Defence Force and Police Mobile Units to withdraw, and weapons to be securely contained;

(2) UNOMB will inform the PPCC sub-committee;

(3) the National Government will be advised and take appropriate steps to arrange for Defence Force and Police Mobile Unit personnel to withdraw from that area;

(4) weapons will be handed in to BRA and BRF unit commanders, who will store them securely in containers provided through the PPCC and sealed for purposes of verification by UNOMB.

Note: BRA and BRF structures are outlined in Attachment 1.

Stage 2

7. (a) After implementation of stage 1 in any area, stage 2 will begin in that area with the delivery of weapons to company commanders, who will place them in secure containers at a small number of central locations.

(b) When and if amendments to the National Constitution to implement the comprehensive agreement are ready for certification, the weapons will be held in containers under UNOMB supervision and secured by two locks – with one key held by the relevant commander and the other held by UNOMB – pending a final decision on the ultimate fate of the weapons.

(c) The Bills to amend the National Constitution will provide for the constitutional amendments to take effect on verification by UNOMB that the weapons are in secure, double-locked containers under its supervision.

Stage 3: Final Fate of the Weapons

8. (a) A decision on the final fate of the weapons should be made within 4 ½ months of the coming into effect of the constitutional amendments. If no decision is made, the Parties will meet with a view to reaching agreement on whether or not the elections should be delayed, taking into account whether or not there has been genuine handing in of weapons and the level of security of the weapons.

(b) In any event, any of the parties may call on the UNOMB with the assistance of the PMG to verify and certify whether there has been substantial compliance by the parties in the handing in of weapons and whether the level of security of the weapons makes it conducive to holding the elections.

(c) UNOMB's report will be presented to, and considered by, the PPCC.

(d) The Bougainville parties will be bound by UNOMB's findings on whether or not the first election for the autonomous Bougainville Government will be deferred, and the length of any deferral.

Verification and Other Practical Considerations

9. (a) UNOMB will carry out such inspections and enquiries as its representative considers necessary at each stage, verify the collection and storage of weapons, and report its findings regularly, frequently and fully to the PPCC, with respect for such confidentiality as may be required.

(b) The parties will co-operate with each other and UNOMB to ensure that UNOMB can carry out its responsibilities under this Resolution efficiently and effectively.

10. (a) Weapons that have been handed in will not be reissued.

(b) Ex-combatants will not attempt to rearm.

(c) Keys will be kept securely by those to whom they are entrusted, and not handed over to anyone else.

(d) The parties will respect and co-operate in promoting wider respect for the security of containers, keys and those who are responsible for them under this Resolution.

(e) The National Government assures the PPCC it will not redeploy members of the Defence Force or the Police Mobile Units in new areas or areas from which they have been withdrawn.

International Aspects

11. The National Government will seek the agreement of the United Nations Security Council for UNOMB to carry out the responsibilities specified in this Resolution,.

12. The National Government will request the states that contribute to the Peace Monitoring Group (PMG) to (1) provide technical assistance, (2) agree to the PMG's support, for implementation of this Resolution.

13. The National Government will seek the assistance of foreign development co - operation partners in developing and implementing a programme to assist in the reintegration and rehabilitation of ex-combatants.

Reconciliation

14. Recognising that weapons disposal and reconciliation are both mutually reinforcing and necessary to lasting peace by peaceful means, the parties undertake to co-operate in promoting reconciliation among ex-combatants and in the wider community, and restoration of civil authority in Bougainville.

ATTACHMENT 1

(1) The Bougainville Resistance Forces are organised as follows:

Company Command
|
Unit Command

A unit consists of 10-30 men, organised mainly on a local geographical basis.

A company command covers the area of an administrative District.

(2) The Bougainville Revolutionary Army is organised as follows:

Regional Command
|
Company Command
|
Unit Command

A unit consists of 10-12 men, usually made up of localized membership.

There are 14 BRA companies, organised on a loosely geographical basis, and each consisting of 80-150 members.

Regional commands are organised into Southern, Central, Northern and Marine commands.

2. WEAPONS DISPOSAL – MANDATES OF UNOMB AND PMG

330. The parties agree that –

(a) the PMG countries and the United Nations Security Council will be requested to agree to continue the PMG and the UNOMB in Bougainville and assist in implementing the PPCC Resolution on Weapons Disposal until the decision is made concerning the final fate of weapons at stage 3 of the agreed weapons disposal plan and the autonomous Bougainville Government is established;

(b) the decision concerning the final fate of the weapons may require a continuing presence by the PMG and the UNOMB for a short period to conclude their assignments during implementation; and

(c) the likely exit-dates for the PMG and the UNOMB are around the middle and not later than the end of 2002).

F. OTHER MATTERS

1. AMNESTY AND PARDON

331. The parties confirm that grants of amnesty and pardon (as agreed in the *Lincoln Agreement)* for all persons involved in crisis-related activities or convicted of offences arising out of crisis-related activities should be expedited, and will co-operate to ensure that they are.

2. RESOLVING DISPUTES DURING IMPLEMENTATION

332. In the period leading up to the establishment of the autonomous Bougainville Government, the parties will consult with a view to avoiding disputes and resolving such differences as may arise over implementation of this Agreement.

333. The means by which differences may be resolved may, by agreement, involve the assistance of a mutually acceptable, neutrai third party, with reference to a court in appropriate cases as a last resort.

334. The National Government will table this Agreement in the UN Security Council, and use its best efforts to obtain support for UNOMB to continue monitoring and reporting on implementation of agreed arrangements as provided in the *Ceasefire Agreement*.

335. The PPCC, which the parties have invited UNOMB to chair, will continue to promote the peace process by addressing such issues as are within its mandate and the parties agree to refer to it for consideration during implementation.

336. The National Government will also use its best efforts to ensure that the PMG continues to provide such assistance in implementation of the *Lincoln Agreement* as the parties may, by agreement, request and the contributing states may agree.

3. RECONCILIATION, AND UNIFIED STRUCTURES FOR BOUGAINVILLE

(a) RECONCILIATION

337. The parties acknowledge the suffering, pain and loss, which has been caused to so many by the Bougainville conflict. Where tensions and differences between individuals and groups remain unresolved, not only is suffering intensified, but peace itself can be threatened by risks of renewed conflict.

338. The success of the peace process has been based on resolution of tensions and differences through a wide range of reconciliation efforts.

339. Reconciliation has many aspects, including customary, religious, spiritual, personal, psychological, and economic. It includes concerns for history, memory and justice. These qualities have been evident in the many reconciliation efforts made in Bougainville, within and between families and communities. For the peace to be self-sustaining, reconciliation efforts must continue.

340. The process of negotiating this agreement has contributed to the reconciliation process, both within Bougainville and between the rest of Papua New Guinea and Bougainville. The Agreement itself is intended to further encourage the process, and among other things:

(b) the autonomy arrangements and other aspects of the Agreement are intended to assist in building a new relationship between Bougainville and the nation as a whole;

(c) the autonomous Bougainville Government and other arrangements for government in Bougainville are intended to end institutional divisions and encourage cooperation among Bougainvilleans;

(d) the agreed weapons disposal plan is intended to remove a major factor contributing to conflict within Bougainville and between Papua New Guinea and Bougainville;

(e) the arrangements for pardon and amnesty are intended to reduce tensions and divisions that could continue to flow from the conflict.

341. The signing of this Agreement is intended to be a symbol of progress in reconciliation.

342. The parties commit themselves to continuing to promote and pursue meaningful reconciliation both within Bougainville and between Bougainville and the rest of Papua New Guinea. They agree to cooperate in:

(a) discouraging threats to individuals and groups or to the peace process as a whole;

(b) where appropriate, preventing and punishing such threats in accordance with the law.

343. The parties will consult from time to time, as required, concerning the steps and resources that might be needed to facilitate further development of reconciliation efforts in the future.

(b) BOUGAINVILLE COMMITMENT TO UNIFIED STRUCTURES

344. The parties agree that:

(a) all groups and individuals in Bougainville should commit themselves to working through the lawful and democratically elected government and the unified administrative and support structures established under the laws that will give effect to this Agreement;

(b) the former combatant groups should be disbanded as soon as they no longer have a role in relation to implementation of the weapons disposal plan provided for under this Agreement;

(c) commanders and members of the former combatant groups should sign the Statement of Commitment to Unified Structures attached to this Agreement.

STATEMENT OF COMMITMENT TO UNIFIED STRUCTURES

(Annex to the *Bougainville Peace Agreement*)

We, commanders and members of the former combatant groups, acting on behalf of those groups and speaking on behalf of their members, agree to the following things:

(a) We are committed to working through the lawful and democratically elected autonomous Bougainville Government and the unified administrative and support structures established under the laws that will be established under the *Bougainville Peace Agreement* made by the representatives of Bougainville and the Papua New Guinea Government signed in August 2001.

(b) We are committed to the former combatant groups being disbanded as soon as they no longer have a role in relation to implementation of the weapons disposal plan provided for under the *Bougainville Peace Agreement*.

(c) We will work towards reconciliation of all disputes and tensions within Bougainville and to avoiding disputes and tensions in the future.